

Mailing Date: OCT 20 2006

COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ADMINISTRATIVE LAW JUDGE
FOR
PENNSYLVANIA LIQUOR CONTROL BOARD

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-0605
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-326890
v.	:	
	:	LID - 49345
MSSD ENTERPRISES, LLC	:	
T/A WTR. FRNT. BAR & GRL. BNQT.	:	
& CNVNTN. CTR.	:	
670 N. RIVER ST.	:	
STE. 100	:	
PLAINS	:	
WILKES-BARRE, PA 18705-1010	:	
	:	
LUZERNECOUNTY	:	
LICENSE NO. R-AP-SS-3450	:	

BEFORE: JUDGE THAU

APPEARANCES:

For Bureau of Enforcement
Craig A. Strong, Esquire
Pennsylvania State Police
8320 Schantz Road, Second Floor
Breinigsville, PA 18031

For Licensee
Ex-Parte

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on March 27, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against MSSD Enterprises, LLC, t/a Wtr. Frnt. Bar & Grl. Bnqt. & Cnvntn. Ctr. (Licensee), License Number R-AP-SS-3450.

This citation¹ contains three counts.

The first count charges Licensee with a violation of Section 13.102(a) of the Pennsylvania Liquor Control Board Regulations [40 Pa. Code §13.102(a)]. The charge is that on February 9, 2006, Licensee, by servants, agents or employes, discounted the price of alcoholic beverages for a period or periods other than a consecutive period of time not to exceed two (2) hours in a business day.

The second count charges Licensee with a violation of Section 13.102 of the Pennsylvania Liquor Control Board Regulations [40 Pa. Code §13.102]. The charge is that on February 9, 2006, Licensee, by servants, agents or employes, furnished an unlimited or indefinite amount of free alcoholic beverages for a period of one (1) hour.

The third count charges Licensee with violations of Section 493(26) of the Liquor Code [47 P.S. §4-493(26)]. The charge is that Licensee, by servants, agents or employes, issued checks or drafts dated January 6 and 12, 2006, in payment for purchases of malt or brewed beverages, when Licensee had insufficient funds in, or credit with, the institution upon which drawn for the payment of such checks.

An evidentiary hearing was conducted on September 7, 2006 at the Scranton State Office Building, PUC Hearing Room 318, 100 Lackawanna Avenue, Scranton, Pennsylvania. Licensee did not appear personally or by representation.

After review of the transcript of that proceeding, the following Findings of Fact and Conclusions of Law are entered.

FINDINGS OF FACT:

1. A citation hearing notice was mailed by the Office of Administrative Law Judge on July 21, 2006 to Licensee by both certified receipt-return mail and first-class mail to the licensed premises. The notice notified Licensee of the date, time and place of the hearing. The Notice, sent by certified mail, was returned as being marked: "moved left no address unable to forward return to sender." On July 24, 2006, I issued a Pre-Hearing Order directing Licensee to submit its pre-hearing memorandum. That Order reiterated the date, time and place of the hearing.

2. The Bureau began its investigation on February 6, 2006 and completed it on February 11, 2006. (N.T. 6)

1. Commonwealth Exhibit No. C-3, N.T. 7.

3. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on February 21, 2006. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 7)

Count Nos. 1 and 2:

4. On Thursday, February 9, 2006, a Bureau Enforcement Officer entered the premises in an undercover capacity. Licensee was engaged in a "penny until you pee" promotion. The promotion began at 9:00 p.m. The staff spread pennies all over the bar using their own coins. None of the patrons paid for alcoholic beverages with their own money. All alcoholic beverages were provided for free between 9:00 p.m. and 9:55 p.m., when a patron had to go to the bathroom. The promotion ceased at 9:55 p.m. Licensee charged regular prices. At 10:30 p.m., Licensee engaged in the same promotion as earlier in the evening. There was an announcement by the disc jockey that another such promotion was going to begin at 11:30 p.m. (N.T. 8-11)

Count No. 3:

5. On January 6, 2006, Licensee issued a check in the amount of \$604.06 to an Importing Distributor for the purchase of beer. The check was dishonored due to insufficient funds and was not made good within ten days. Licensee issued a second check on January 12, 2006 in the amount of \$1,290.75 to an Importing Distributor for the purchase of beer. The check was dishonored due to insufficient funds and was not made good within ten days. (N.T. 8)

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.
2. Count Nos. 1, 2 and 3 are **sustained** as charged.

PRIOR RECORD:

Licensee has been licensed since May 3, 2002, and has had seven prior violations (Commonwealth Exhibit No. C-4, N.T. 17):

Adjudication No. 03-0764. Fine \$100.00.
Operated the licensed establishment without a valid health permit or license.
April 14, 2003.

Adjudication No. 04-2280. Fine \$200.00.
Issued worthless checks in payment for malt or
brewed beverages.
August 18, September 9 and October 28, 2004.

Adjudication No. 05-0467. Fine \$250.00.
Sold an unlimited or indefinite amount of alcoholic
beverages for a fixed price.
January 23 and February 6, 2005.

Adjudication No. 05-0875. Fine \$300.00.
Issued worthless checks in payment for malt or
brewed beverages.
February 11, March 11, 18 and 21, 2005.

Adjudication No. 05-1385. Fine \$400.00.
Issued worthless checks in payment for malt or
brewed beverages.
March 25, April 20, 22, 30, May 13 and 14, 2005.

Adjudication No. 05-1724. Fine \$500.00.
Issued worthless checks in payment for malt or
brewed beverages.
May 20, 27, 31, June 17 and 25, 2005.

Adjudication No. 05-2522. Fine \$600.00 fine.
Issued worthless checks in payment for malt
or brewed beverages.
July 2, August 10, 12, 26 and September 2, 2005.

PENALTY:

Section 471 of the Liquor Code [47 P.S. §4-471] prescribes a penalty of license suspension or revocation or a fine of not less than \$50.00 or more than \$1,000.00 or both for violations of the type found in Count Nos. 1, 2 and 3 in this case.

As Licensee failed to appear at the hearing, I impose:

Count No. 1 – \$1,000.00 fine.
Count No. 2 – \$1,000.00 fine.
Count No. 3 – \$1,000.00 fine.

ORDER:

Imposition of Fine

THEREFORE, it is hereby ordered that Licensee pay a fine of \$3,000.00 within 20 days of the mailing date of this Order. In the event the aforementioned fine is not paid within 20 days from the mailing date of this Order, Licensee's license shall be suspended or revoked.

The fine must be paid by Treasurer's Check, Cashier's Check, Certified Check or Money Order. **Personal checks, which include business-use personal checks, are not acceptable.** Please make your guaranteed check payable to the Commonwealth of Pennsylvania and mail to:

PLCB - Office of Administrative Law Judge
Brandywine Plaza
2221 Paxton Church Road
Harrisburg, Pennsylvania 17110-9661

Retaining Jurisdiction

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 12th day of October, 2006.

Felix Thau, A.L.J.

pm

MOTIONS FOR RECONSIDERATION MUST BE RECEIVED WITHIN 15 DAYS OF THE MAILING DATE OF THIS ORDER TO THE OFFICE OF ADMINISTRATIVE LAW JUDGE AND REQUIRE A \$25.00 FILING FEE. A WRITTEN REQUEST FOR RECONSIDERATION MUST BE SUBMITTED WITH THE FILING FEE.